



## CITY OF LODI

## COUNCIL COMMUNICATION

AGENDA TITLE: Consideration of an ordinance relating to the regulation of adult businesses.

MEETING DATE: May 6, 1992

PREPARED BY: City Attorney

RECOMMENDED ACTION: Council consideration of the attached ordinance regulating the location and manner of operation of adult businesses.

BACKGROUND: The recent opening of an adult bookstore in downtown Lodi has pointed out that the City presently has no specific regulations for such uses other than those applicable to all businesses generally. This has resulted in a great deal of discussion on the advisability of having specific regulations for adult businesses.

The attached draft ordinance has been prepared to deal not only with existing businesses, but to try to anticipate situations which may arise at some future date.

The proposed ordinance would cover not only adult bookstores, but video arcades and theaters showing adult films, stores which sell articles of an adult nature, "modeling studios" which are in reality merely places where nude entertainment is offered, and newsracks offering sexually oriented material.

This draft has been prepared using a number of ordinances from other jurisdictions as models, and reflects to the best of my ability accommodations for recent court decisions. It is fundamentally a zoning or land use regulation rather than a penal statute.

Cases such as City of Renton v. Playtime Theaters point out that difference between zoning/land use regulations and ordinances aimed at controlling conduct. The U. S. Supreme Court said a regulation aimed at the "secondary effects" of adult businesses (such as blight, etc.) may be proper. However, an attempt to directly control the "communication" aspects of adult books or films will probably fail on First Amendment grounds.

APPROVED

THOMAS A. PETERSON  
City Manager



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For this reason, I believe an attempt to require background checks on operators of adult businesses would fail because it seems aimed more at individuals than land uses.

The only case on point found was Genura v. City of Peoria (1980) 619 F.2d 1203, where Peoria's ordinance requiring a background check of adult business operators was overturned. Although municipalities can, for example, investigate operators of massage parlors, that activity has no First Amendment protection.

The Community Development Director has recommended that these businesses not be subject to use permits. since Lodi has traditionally maintained good land use control without utilizing use permits as extensively as other cities. Admittedly, many other cities' ordinances required use permits as a part of the regulatory process. but in many cases. the broad discretion associated with issuance of these use permits was the reason the ordinances were Overturned.

As discussed above, the draft ordinance covers situations not yet faced by Lodi but which could feasibly occur. These include adult newsracks, gift shops, modeling studios, etc. The ordinance does not, however, cover "cabarets", i.e., nightclubs where "adult" entertainment such as topless dancing, might be offered. They were not included because these uses present an entirely new set of considerations. Taverns or nightclubs already exist all over the City, and separation requirements would create major problems. If it is desired to regulate adult entertainment in these, a specific set of regulations would probably be required. Council direction on this point is requested.

It is also true that no restriction on doing business with minors under 18 years of age is included. This was omitted because first, that seems to go beyond "secondary effect" regulation and also. State law governing such things as contributing to the delinquency of minors may already have preempted the field.

As drafted, the chief effects of this ordinance are:

- 1) To require 1,000-foot separations from schools, churches, care centers, playarounds and other adult businesses;
- 2) Regulates the exterior appearance of the buildings where adult businesses are carried on;
- 3) Regulates hours of operation; and
- 4) Requires that the interior of film or video tape viewing booths be visible from the front of the premises.

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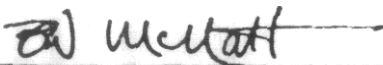
Preliminary calculations indicate that because of the actual patterns of Lodi's residential zones, it would have been difficult to establish separations from such residential zones without severely limiting potential locations for adult businesses. Prior cases such as City of Stanton v. Cox have held that where separation requirements leave too few sites for such uses, the ordinance may be invalidated.

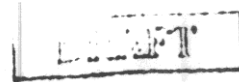
The attached ordinance was drafted to avoid that problem. Adult businesses are presently allowed in all industrial and commercial zones. Calculating separations based on these existing conditions indicates there would still be about 635 acres of industrial and 85 acres of commercially-zoned property usable for adult business locations.

Since the present business on South Sacramento Street is within 1,000 feet of several parks, churches and schools, it should be remembered that even if this ordinance is adopted, the existing business would be grandfathered in as a prior nonconforming use. It would be allowed to continue for an undetermined amount of time under the existing regulations for nonconforming uses unless the Council chooses to establish an amortization schedule. Even if that was done, it would simply require that the operator relocate to a conforming location at the end of the specified period. Whether that is desirable is a question for Council discretion.

FUNDING: None determined.

Respectfully submitted.

  
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Bob McNatt  
City Attorney



ORDINANCE NO. 1550

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI  
RELATING TO THE REGULATION OF ADULT BUSINESSES

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Chapter \_\_\_\_ ■ Adult Businesses, is hereby added to the  
Lodi Municipal Code to **read** as follows:

Chapter \_\_\_\_\_

ADULT BUSINESSES

- Section 1. Findings
- Section 2. Definitions
- Section 3. Location of Adult Businesses
- Section 4. Appearance of Premises: **Advertising** Displays
- Section 5. Viewing Booths: Visibility
- Section 6. Hours of Operation
- Section 7. Severability

Section 1. Findings.

The City Council of the City of Lodi finds and declares that adult businesses, by their nature, generate certain secondary effects unless regulated. These include blight, downgrading of neighborhoods. lowering of property values, and a tendency to attract undesirable persons who may engage in certain types of criminal conduct. Experience in other cities has shown that where adult businesses are

concentrated, neighborhoods deteriorate and the areas become less desirable places in which to work and live. To avoid these secondary effects, this ordinance is intended to prevent concentrations of such uses in a single area, and to regulate to the extent permitted by law the manner in which adult businesses are conducted.

## Section 2. Definitions.

A. "Adult business" shall include the following:

1. "Adult bookstore" means any commercial establishment that has 25% or more of its stock in books, magazines, photographs, drawings, video tapes, films, or other representations which describe or depict specified sexual activities or specified anatomical areas.

2. "Adult gift shop" means any commercial establishment that has in its stock articles or merchandise more than 25% of which is characterized or distinguished by emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

3. "Adult newsrack" means any coin operated machine or device dispensing material substantially devoted to the depiction of specified sexual activities or specified anatomical areas.

4. "Adult theater" means any commercial theater or place of business which presents live entertainment, closed circuit television, video tapes, films, or slides more than 25% of which

dre characterized or distinguished by emphasis on matter depicting or describing specified sexual activities or specified anatomical areas.

5. "Adult video establishment" means an establishment dealing in the sale or rental of video tapes or cassettes for use or viewing on or off the premises, and having 25% or more of its stock in trade in material which is characterized or distinguished by its emphasis on matters depicting or describing specified sexual activities or specified anatomical areas.

6. 'Modeling studio' means any business or establishment which, for any form of consideration, provides the services of a live human model, either wholly or partially nude, for the purpose of allowing customers or patrons to paint, sketch, draw, photograph or reproduce by other method an image of or upon such model.

8. "Child care center" means any business or establishment licensed by the State of California for child care or day care services.

C. 'School' means an institution, either public or private, for instruction in courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This includes nursery school, kindergarten, elementary school, junior high school, senior high school, or special institution of learning under the jurisdiction of the State Department of Education.

D. "Specified sexual activities" means:

I. Depiction or description of:

- a) Actual or simulated sexual intercourse, fellatio, cunnilingus, bestiality, sodomy, sadomasochism, analingus, coprophilia, necrophilia, or pedophilia;
- b) Clearly depicted human genitals in a state of sexual stimulation or arousal;
- c) Fondling or touching of nude human genitals, pubic regions, buttocks or female breasts;
- d) Human excretion, urination, menstruation, vaginal or anal irrigation; or
- e) Any combination of the foregoing.

E. "Specified anatomical areas" means:

I. less than completely and opaquely covered:

- a) Human genitals or pubic region;
- b) Buttocks;
- c) female breasts below a point immediately above the top of the areolae; and

II. Human male genitals in a discernibly turgid or erect state, even if completely and opaquely covered.

Section 3. location of Adult Businesses.

From and after adoption of this ordinance, no person shall establish, conduct or permit to be established or conducted any adult business within 1,000 feet of any church, school, playground, child care center, or other adult business.

For purposes of this section, the distance between *uses* shall be measured in a straight line without regard to intervening structures from the closest exterior of each business or use.

Adult businesses in existence on the effective date of this chapter are deemed non-conforming uses which may continue subject to the provisions of Section 17.69.030 of this Code.

Section 4. Appearance of Premises: Advertising Displays.

A. The exterior appearance of buildings housing adult businesses shall not be inconsistent with the external appearance of commercial structures already constructed or under construction within the immediate neighborhood so as to cause blight, deterioration, or substantially diminish or impair property values in the neighborhood where such business is located.

B, No adult business shall display in any fashion or location visible to persons on any public street or sidewalk any sign, poster, photograph, or display of merchandise or stock in trade depicting specified sexual activity or specified anatomical areas.

Section 5. Viewing Booths: Visibility.

No adult business in which is located one or more viewing booths for the purpose of viewing films, cassettes, or video tapes characterized by emphasis on matter depicting specified sexual activities or specified anatomical areas shall be maintained or operated unless the complete interior of such booths or enclosures where films or tapes are viewed is visible from the entrance to such



premises. No partially or fully enclosed or concealed booths shall be permitted.

Section 6. Hours of Operation.

No adult business as defined herein with the exception of adult newsracks shall remain open between the hours of 2:00 a.m. and 8:00 a.m., and all patrons, customers, and visitors shall be excluded therefrom during those hours.

Section 7. Severability.

If any section, subsection, sentence, clause or portion of this chapter is, for any reason, held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article. The City Council of the City of Lodi declares it would have adopted this chapter and each section, subsection, sentence, clause or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or portions thereof should be declared invalid or unconstitutional.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this       day of

JAMES W. PINKERTON, JR.  
Mayor

Attest:

ALICE M. REIMCHE  
City Clerk

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State of California  
County of San Joaquin, ss.

I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1550 was introduced at a regular meeting of the City Council of the City of Lodi held May 6, 1992 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 1992 by the following vote:

Ayes: Council Members -

Noes: Council Members -

Absent: Council Members -

Abstain: Council Members -

I further certify that Ordinance No. 1550 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

ALICE M. REIMCHE  
City Clerk

Approved as to Form

BOBBY W. McNATT  
City Attorney

ORD1550/TXTA.01V

CITY COUNCIL

JAMES W. PINKERTON, Mayor

PHILLIP A. PENNINO

Mayor Pro Tempore

DAVID M. HINCHMAN

JACK A. SIEGLOCK

JOHN R. (Randy) SNIDER

# CITY OF LODI

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FAX (209) 333-6795

THOMAS A. PETERSON  
City Manager

ALICE M. REIMCHE  
City Clerk

BOB McNATT  
City Attorney

CC-6

September 15, 1992

CC-17

CC-156

Charles A. Pacheco, Enquire  
Pacheco L Pacheco. Inc.  
910 Florin Road, Suite 204  
Sacramento, CA 95831

Subject: KAREN A. RAY: MASSAGE TECHNICIAN LICENSE

Dear Mr. Pacheco:

Pursuant to our conversation of September 15, 1992 and the stipulation and agreement of the Lodi city Council at its meeting of August 5, 1992 regarding your client, Karen A. Ray, returned herewith in your client's Massage Technician License.

At the August 5, 1992 meeting, the Council had stipulated that should the charges of a violation of California Penal Code Section 647(b) or a related offense be dismissed, your client would retain her Massage Technician License. Since the District Attorney's office has decided not to press the charge against your client, the Massage Technician's License is therefore returned.

Sincerely,



BOB W. McNATT  
City Attorney

BM:vc

enclosure

cc: Lodi city Council Members  
Detective Matt Foster  
City Clerk  
Revenue Manager

PDMASG.18/TXTA.01V